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Security Council Committee established pursuant to resolution 1737 (2006)

Note verbale dated 6 August 2010 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations has the honour to transmit herewith a report on the steps Australia has taken with a view to implementing paragraphs 7 to 19 and 21 to 24 of Security Council resolution 1929 (2010), pursuant to paragraph 31 of that resolution (see annex).

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Annex to the note verbale dated 6 August 2010 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

Report of Australia to the Security Council Committee established pursuant to resolution 1737 (2006) on implementation of Security Council resolution 1929 (2010)

1. Paragraph 31 of resolution 1929 (2010), adopted on 9 June 2010 by the Security Council:

> *Calls upon* all States to report to the Committee within 60 days of the adoption of this resolution on steps they have taken with a view to implementing effectively paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 24;

The present report describes the steps taken by Australia to implement those measures.

Measures given effect under the Charter of the United Nations Act 1945

2. Paragraphs 7 to 9, 11 to 13, 18 and 19 of resolution 1929 (2010) are implemented in Australia by the Charter of the United Nations (Sanctions — Iran) Regulations 2008 ("the Regulations"). The Regulations were made pursuant to subsection 6(1) of the Charter of the United Nations Act 1945 ("the Act") and, as such:

- In accordance with section 9 of the Act, the Regulations have effect despite: an Act enacted before the commencement of the Regulations; or a law of a State or Territory; or an instrument made under such a law; or any provision of the Corporations Act 2001, or the Australian Securities and Investments Commission Act 2001, or of regulations made under those Acts; or an instrument made under such a provision; and
- In accordance with subsection 10(1) of the Act, no Act enacted at or after the commencement of section 10 of the Act may be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of the Regulations; or as authorizing the making of an instrument amending or repealing, or otherwise altering the effect or operation of, a provision of the Regulations.

3. References in the present report to "the Committee" are to the Committee established under Security Council resolution 1737 (2006) unless otherwise specified.

Paragraph 7

4. The Regulations define the investment to be denied Iran pursuant to paragraph 7 of resolution 1929 (2010) (that is, an interest in any commercial activity in another State involving uranium mining, production or use of nuclear materials and technology as listed in International Atomic Energy Agency (IAEA) document INFCIRC/254/Rev.9/Part 1, in particular uranium enrichment and reprocessing activities, all heavy water-related activities or technology related to ballistic missiles

capable of delivering nuclear weapons) as "sensitive commercial activity" (regulation 17A(2)).

5. Regulation 17A of the Regulations then prohibits a person from selling, or making available, an interest in a sensitive commercial activity to:

(a) Iran; or

(b) An Iranian national; or

(c) An entity incorporated in Iran or subject to Iranian jurisdiction; or

(d) A person or entity acting on behalf of, or at the direction of, (a), (b) or (c); or

(e) An entity owned or controlled by (a), (b) or (c).

Paragraph 8

6. The Regulations now include the items referred to in the first part of paragraph 8 of Security Council resolution 1929 (2010) in the definition of "export sanctioned goods" in subregulation 5(1) of the Regulations; that is:

(a) Battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register of Conventional Arms, or related materiel, including spare parts (paragraph 5(1)(c) of the Regulations); and

(b) Items as determined by the Security Council or the Committee (paragraph 5(1)(b) of the Regulations).

7. The direct or indirect supply, sale or transfer of export sanctioned goods to Iran is defined in regulation 7 of the Regulations as a "sanctioned supply". Regulation 10 of the Regulations prohibits without exception making a sanctioned supply of the items referred to in paragraph 8.

8. The provision to Iran of technical training, financial resources or services, advice, other services or assistance related to the supply, sale, transfer, provision, manufacture, maintenance or use of "export sanctioned goods" is defined in regulation 8 of the Regulations as "sanctioned supply". Regulation 13 of the Regulations prohibits without exception providing a sanctioned service in relation to the items referred to in paragraph 8.

9. In response to the call in paragraph 8 of resolution 1929 (2010) to exercise vigilance and restraint over the supply to Iran of all other arms and related materiel, regulation 13CQ of the Customs (Prohibited Exports) Regulations 1958 has been amended to include such items. As a consequence, the prior authorization of the Minister for Foreign Affairs is required to export such items to Iran.

Paragraph 9

10. Regulation 17B of the Regulations prohibits, without exception, the transfer of technology, or the provision of technical assistance, to Iran for, or in relation to, an activity related to the development or use of ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology.

Paragraphs 11, 12 and 19

11. Security Council resolution 1929 (2010) applies the measures specified in paragraphs 12 to 15 of Council resolution 1737 (2006) to:

(a) The individuals and entities listed in annex I (para. 11);

(b) The Islamic Revolutionary Guard Corps (also known as "Army of the Guardians of the Islamic Revolution") individuals and entities specified in annex II (para. 12); and

(c) The entities of the Islamic Republic of Iran Shipping Lines as specified in annex III (para. 19).

12. The Regulations incorporate by reference any person or entity designated by the Committee or by the Security Council for paragraph 12 of resolution 1737 (2006) within the Regulations' definition of "designated person or entity" (regulation 4). The Regulations define any funds, other financial assets and economic resources that are owned or controlled by designated persons or entities, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them, including through illicit means, as "controlled assets" (regulation 4). As a consequence, the provisions of the Regulations that give effect to paragraphs 12 to 15 of resolution 1737 (2006) (regulations 15 to 17) apply to a person or entity, or to any asset owned or controlled by them, simultaneously upon their designation by the Committee or the Security Council for paragraph 12 of resolution 1737 (2006). The measures in paragraphs 11, 12 and 19 of resolution 1929 (2010) thus took effect in Australia on 9 June 2010.

13. Regulation 15 prohibits directly or indirectly making any asset available to, or for the benefit of, a designated person or entity, or for a person or entity acting on behalf or at the direction of a designated person or entity, or by an entity owned or controlled by a designated person or entity, including through illicit means, other than as authorized by a permit under regulation 17.

14. Regulation 16 of the Regulations prohibits a person who holds a controlled asset from using or dealing with it, or allowing it to be used or dealt with, or facilitating the use of it or dealing with it, other than as authorized by a permit under regulation 17. In other words, a person who holds a controlled asset must "freeze" the asset.

15. Regulation 17 of the Regulations provides that the Minister for Foreign Affairs may grant, on application, a permit authorizing that an asset be made available to a person or entity that would otherwise contravene regulation 15, or a permit authorizing the use of, or dealing with, a controlled asset, that would otherwise contravene regulation 16. Regulation 17 limits the Minister's authority to issue such permits to the circumstances mentioned in resolution 1737 (2006) (defined, except as otherwise indicated, in regulation 5 of the Charter of the United Nations (Dealing with Assets) Regulations 2008), namely:

(a) A "basic expense dealing", defined to correspond to subparagraph 13 (a) of resolution 1737 (2006);

(b) An "extraordinary expense dealing", defined to correspond to subparagraph 13 (b) of resolution 1737 (2006);

(c) A "legally required dealing", defined to correspond to subparagraph 13 (c) of resolution 1737 (2006);

(d) For a use or dealing that relates to a sanctioned supply authorized by a permit under regulation 11 of the Regulations, or a sanctioned service authorized by a permit under regulation 14 of the Regulations, defined (in regulation 17, paragraph (3) (a) of the Regulations) to correspond to subparagraph 13 (d) of resolution 1737 (2006);

(e) A "contractual dealing", defined to correspond to paragraph 14 of resolution 1737 (2006);

(f) A "required payment dealing", defined to correspond to paragraph 15 of resolution 1737 (2006).

Paragraph 13

16. In accordance with paragraph 13 of Security Council resolution 1929 (2010), the Regulations have been amended to replace references to the list of items in United Nations document S/2006/814 with the list of items in IAEA documents INFCIRC/254/Rev.9/Part 1 and INFCIRC/254/Rev.7/Part 2, and references to the list of items contained in S/2006/815 with the list of items contained in S/2010/263, in regulations that give effect to paragraphs 3 to 7 of resolution 1737 (2006).

17. Paragraph 13 of resolution 1929 (2010) provides that, for the purposes of the measures specified in paragraphs 3 to 7 of resolution 1737 (2006), the list of items in document S/2006/814 shall also be superseded by any further items that a State determines could contribute to enrichment-related, reprocessing or heavy water-related activities or to the development of nuclear-weapon delivery systems ("the prohibited activities").

18. Regulation 5 of the Regulations (which defines "export sanctioned goods" for the purposes of the Regulations) provides that the Minister for Foreign Affairs may, by legislative instrument, determine that goods not otherwise described in regulation 5 are "export sanctioned goods" if the Minister is satisfied that the goods could, if supplied to Iran, contribute to the prohibited activities. The legislative instrument including the list of goods so determined by the Minister is the Charter of the United Nations (Sanctions — Iran) (Export Sanctioned Goods) List Determination 2008 ("the Iran Goods List").

19. As discussed above, the direct or indirect supply, sale or transfer of export sanctioned goods to Iran is defined in regulation 7 of the Regulations as a "sanctioned supply". Regulation 10 of the Regulations now prohibits making a sanctioned supply of the items referred to in the Iran Goods List, otherwise than in accordance with the provisions of paragraph 9 of Council resolution 1737 (2006).

20. A new regulation 5A authorizes the Minister for Foreign Affairs to prohibit, by issuing a written prohibition notice, the supply, sale or transfer of goods that are not included in the definition of "export sanctioned goods" (including items referred to in the Iran Goods List) if the Minister is satisfied on reasonable grounds that:

(a) If the goods were sold, supplied or transferred, the goods could: (i) directly or indirectly be supplied to, or for the use in or benefit of, Iran; or (ii) be incorporated into goods that could be supplied to, or for the use in or benefit of, Iran; and

(b) The goods, if so supplied, could contribute to: (i) enrichment-related, reprocessing or heavy water-related activities; or (ii) the development of nuclear-weapon delivery systems; or (iii) the pursuit of activities about which IAEA has expressed concern or identified as outstanding.

Regulation 11A then prohibits the supply, sale or transfer of goods subject to a regulation 5A prohibition notice.

Paragraph 18

21. Regulation 17C of the Regulations prohibits the unauthorized provision of a bunkering service to an Iranian vessel. "Bunkering service" is defined in regulation 4 as including the provision of fuel or supplies to a vessel and other servicing of the vessel. "Iranian vessel" is defined in regulation 4 as a vessel that is registered in Iran or is Iranian owned or contracted, including by charter.

22. Regulation 17D of the Regulations provides that the Minister for Foreign Affairs may, upon application, grant a person a permit authorizing the provision of a bunkering service to an Iranian vessel. Subregulation 17D(2) limits the circumstances in which the Minister may grant a permit. The Minister must not grant a permit if the Minister has reasonable grounds to believe the vessel is carrying export sanctioned goods, unless the supply of the service is necessary for humanitarian purposes, or the export sanctioned goods have been inspected and, if necessary, seized and disposed of.

Paragraph 22

23. The Regulations give legal effect to the obligation in paragraph 22 of Security Council resolution 1929 (2010) to require persons and firms subject to Australian jurisdiction to exercise vigilance when doing business with entities subject to Iran's jurisdiction as follows.

24. Regulation 17E of the Regulations requires the Minister for Foreign Affairs to specify entities incorporated in Iran or subject to Iranian jurisdiction if the Minister has reasonable grounds to believe that unauthorized business with the entity may contribute to Iran's proliferation-sensitive nuclear activities, to the development of nuclear-weapon delivery systems, or to a violation of Council resolutions 1737 (2006), 1747 (2007), 1803 (2008) or 1929 (2010) ("Iran's prohibited activities").

25. Regulation 17E of the Regulations then prohibits a person from conducting business with an entity specified by the Minister for Foreign Affairs, or an individual or entity acting on behalf of, or under the direction of, the specified entity, or an entity owned or controlled by the specified entity, without the prior authorization of the Minister.

26. Regulation 17F provides that the Minister for Foreign Affairs may, upon application, grant a person a permit authorizing the conduct of business with a specified entity, but must not do so if the Minister has reasonable grounds to believe the proposed business may, in fact, contribute to Iran's prohibited activities. Any person engaged in business with a specified entity at the time it is specified will have 30 days to apply for a permit to continue that business.

27. The entities specified by the Minister are set out in the Charter of the United Nations (Iran — Sanctions) (Specified Entities) List 2010 ("the Specified Entities

List"). The Minister has specified entities that have not, to date, been designated by the Committee or by the Security Council for paragraph 12 of resolution 1737 (2006), but which nevertheless fall within one of five categories of entities identified by the Council as representing a particular risk in relation to Iran's nuclear and missile programmes or the violation of resolutions 1737 (2006), 1747 (2007), 1803 (2008) or 1929 (2010). These categories are:

(a) Entities linked to Iran's nuclear and missile programmes;

(b) Islamic Revolutionary Guard Corps entities;

(c) Transportation sector entities (including of the Islamic Republic of Iran Shipping Lines);

(d) Financial entities; and

(e) Oil and gas sector entities.

Enforcement of the Regulations

28. On 23 July 2010, the Minister for Foreign Affairs specified regulations 10 (enforcing paragraphs 8 and 13), 11A, 12 and 13 (enforcing measures relevant to paragraph 13), 15 and 16 (enforcing paragraphs 11, 12 and 19), 17A (enforcing paragraph 7), 17B (enforcing paragraph 9), 17C (enforcing paragraph 18) and 17E (enforcing paragraph 22) to be "United Nations sanction enforcement laws" by the legislative instrument entitled Charter of the United Nations (United Nations Sanction Enforcement Law) Declaration 2008 in accordance with subsection 2B(1) of the Charter of the United Nations Act 1945 (the Act). Contravention of a United Nations sanction enforcement law, or of a condition of a permit granted under a United Nations sanction enforcement law (where applicable), is an offence under section 27 of the Act.

29. Each United Nations sanction enforcement law is given the jurisdictional scope to correspond with the obligation it enforces. All apply to conduct when committed, or when a result of the conduct occurs, wholly or partly in Australia or on board an Australian aircraft or ship.

30. Regulations 10, 11A, 12, 13, 15, 16 and 17C additionally apply (by reference in those regulations to the application of section 15.1 of the Criminal Code 1995) to conduct when committed wholly outside Australia by an Australian citizen or an Australian body corporate.

31. Regulations 10 and 12 also provide that they apply to conduct when committed by a person, whether or not in Australia and whether or not an Australian citizen, using the services of an Australian ship or an Australian aircraft.

32. Regulations 10, 11A, 12 and 13 further provide that an Australian body corporate is liable for conduct contravening the regulation committed by another body corporate or entity, wherever incorporated or situated, if the Australian body corporate has effective control over the actions of that other body corporate or entity.

33. Regulation 17E provides that it applies to an Australian national or entity or a person or entity subject to Australian jurisdiction.

34. The maximum penalty upon conviction for such an offence for individuals is 10 years' imprisonment or a fine the greater of 2,500 penalty units or three times the value of the transaction (if this can be calculated). For a body corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions and exercised due diligence to avoid contravening the regulation. The maximum penalty for bodies corporate upon conviction is a fine the greater of 10,000 penalty units or three times the value of the transaction (if this can be calculated). As at 6 August 2010, a penalty unit is equivalent to 110 Australian dollars under section 4AA of the Commonwealth Crimes Act 1914.

Measures given effect by other means

Paragraph 10

35. Travel bans imposed on designated persons by Security Council resolutions are implemented in Australia by the Migration (United Nations Security Council Resolutions) Regulations 2007 (the Migration Regulations). The Migration Regulations provide that a person who is or becomes the subject of specified resolutions of the Council that require Australia to prevent that person entering or transiting through Australian territory is unable to be granted a visa or, if a visa has already been granted, may have his or her visa cancelled, consistent with the obligations in the relevant Council resolution.

36. The Department of Immigration and Citizenship maintains a Movement Alert List, which includes the names of non-citizens whose eligibility for a visa grant or continuing eligibility to hold a visa may be an issue. All persons designated under paragraph 10 of Security Council resolution 1929 (2010) as being subject to travel measures have been included on the List. The names of all visa applicants are checked against the List prior to any decision to grant a visa to enter Australia. The List is electronically accessible to officers of the Department of Immigration and Citizenship posted to Australia's diplomatic and consular missions worldwide, although the matching process has been centralized in the Border Operations Centre in the Department of Immigration and Citizenship's National Office. Additional checks are also undertaken at Australian entry points to ensure that any person put on the List subsequent to a visa grant is identified.

37. Where there may be a potential match between a visa applicant and an individual on the Movement Alert List, further enquiries must be made before a visa can be granted, or, if it has already been granted, to consider whether it can or must be cancelled. Led by the Department of Immigration and Citizenship, this is a consultative process including many Government bodies, which aims to resolve the List alert by examining available data on both applicants and individuals on the List.

Paragraph 14

38. Paragraph 14 of Security Council resolution 1929 (2010), calling on States to inspect all cargo to and from Iran where there are grounds to believe the cargo contains items subject to sanctions prohibitions, is given effect in Australia through the Customs Act 1901, which is administered by the Australian Customs and Border Protection Service. Regulation 4Z of the Customs (Prohibited Imports) Regulations 1956 and regulation 13CQ of the Customs (Prohibited Exports) Regulations 1958, which are made under the Customs Act 1901, set out respectively goods which are prohibited imports from Iran and prohibited exports to Iran in accordance with

Council resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010). Both of these regulations have been specified as "United Nations sanction enforcement laws".

39. Customs and Border Protection Officers are authorized to search vessels and aircraft and to inspect cargo within Australian jurisdiction, irrespective of whether there are grounds to believe that the aircraft or vessel is transporting prohibited goods. The Customs Act 1901 requires cargo to be reported to the Australian Customs and Border Protection Service prior to import to and export from Australia. This reporting is done electronically through the Integrated Cargo System. Customs and Border Protection uses the Integrated Cargo System to profile and identify cargo that might be prohibited or of risk, such as prohibited imports or prohibited exports in relation to Iran. This enables Customs and Border Protection to target, inspect and interdict cargo of concern that might be going to or coming from Iran.

Paragraph 15

40. Paragraph 15 of Security Council resolution 1929 (2010) calls on States to cooperate in inspections of vessels on the high seas with the consent of the flag State where there are grounds to believe the vessel is carrying items subject to sanction prohibitions. The Australian Government has put in place arrangements to enable Australia to cooperate in such inspections in terms of paragraph 15.

41. Australia actively maintains and refines its capabilities for interdicting trade related to weapons of mass destruction through its participation in the Proliferation Security Initiative, which is a global effort to prevent shipments of weapons of mass destruction, their delivery systems and related materials, to and from States and non-State actors of proliferation concern. Participating countries commit to disrupting the illicit trade in weapons of mass destruction by interdicting vessels, aircraft or other modes of transport in or over their territory or territorial waters that are reasonably suspected of carrying illicit cargo. The Statement of Interdiction Principles of the Initiative expressly commits all participants to take action to interdict illicit transfers of weapons of mass destruction where appropriate, to the extent that their national legal systems permit and consistent with their obligations under international law and frameworks.

42. Countries participating in activities under the Proliferation Security Initiative have developed their maritime, air and ground interdiction capabilities through a programme of joint training exercises in Europe, Asia and North America. These exercises are designed to enhance operational responsiveness by testing national interdiction capacity; improve mechanisms for conducting joint interdiction operations with other countries; bridge differences in training and operational systems; and allow operational crews and policy experts to learn to work together in a cooperative and collaborative manner.

Paragraph 16

43. Australia is able to give effect to the obligation in paragraph 16 of Security Council resolution 1929 (2010) to seize and dispose of prohibited items identified in inspections pursuant to paragraphs 14 or 15 in accordance with powers provided for in the Customs Act 1901.

Paragraph 17

44. In the event Australia undertakes an inspection pursuant to paragraphs 14 or 15, the Australian Government will submit to the Committee written reports in accordance with paragraph 17.

Paragraphs 21 to 24

45. The Australian Government is amending the Corporations Regulations 2001 to ensure no Iranian bank is able to receive an Australian Financial Services Licence where there are grounds to believe that its proposed activities in Australia could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear-weapon delivery systems.

46. The Australian Prudential Regulation Authority, the prudential regulator of the Australian financial services industry that oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies and most members of the superannuation industry, has written to all entities subject to its supervision requesting that they undertake no activities that would breach any of the calls in paragraphs 21 to 24 of Security Council resolution 1929 (2010).

47. In general, Australian law establishes as serious criminal offences any intentional contribution to a ballistic missile related or other weapons of mass destruction-related programme or activity. These offences include the intentional provision of financial assistance for such a programme or activity (section 4 and section 11 of the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995). The provisions of paragraphs 21 to 24 of Security Council resolution 1929 (2010) have been brought to the attention of agencies responsible for the implementation and enforcement of these laws.

48. The Australian Transaction Reports and Analysis Centre, Australia's anti-money-laundering and counter-terrorism financing regulator and specialist financial intelligence unit, collects all customer-based international funds transfer instructions and may also receive suspicious reports relating to customers of financial institutions who have dealings with Iran or who are designated under Security Council sanctions regimes. In addition, the Australian Government collects information about the activities of financial institutions based in Australia in connection with financial institutions domiciled in Iran and other overseas branches and subsidiaries. Upon request, the Australian Federal Police will examine any financial activity in relation to Iran and advise relevant agencies as required.

49. The Australian Transaction Reports and Analysis Centre will issue an information circular to industry drawing attention to Security Council resolution 1929 (2010) and its extension of sanctions imposed against Iran. The circular will also remind entities regulated by the Centre to take into account Council resolutions and Australian law when considering whether particular transactions should be reported to the Centre as suspicious transactions.